

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BILLY FRANK GILLEY,

CV 98-854-AS

Petitioner,

ORDER

v.

MITCH MORROW,

Respondent.

DENNIS N. BALSKE

Attorney at Law
222 S.W. Columbia, Suite 600
Portland, OR 97201
(503) 242-3831

Attorney for Petitioner

HARDY MYERS

Attorney General
DOUGLAS Y.S. PARK
Assistant Attorney General
Department of Justice
1162 Court Street N.E.
Salem, OR 97301
(503) 378-6313

Attorneys for Respondent

BROWN, Judge.

Magistrate Judge Donald C. Ashmanskas issued Findings and Recommendation (#135) on December 30, 2004, in which he recommended this Court grant Petitioner's Amended Petition for Writ of Habeas Corpus (#78). Respondent filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). This Court has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Ashmanskas's Findings and Recommendation (#135) and, accordingly, **conditionally GRANTS** Petitioner Billy Frank Gilley's Writ of Habeas Corpus (#78).

The Court orders the State of Oregon to bring Billy Frank Gilley to retrial within ninety (90) days from the date of this Judgment in addition to any delay authorized by state law. The 90-day period will begin to run after the period to appeal this Judgment in this matter has expired or when any appeal is resolved and a mandate issues returning jurisdiction to this Court.

If the State does not bring Gilley to retrial within the ordered time, Gilley shall be released from custody pending trial unless the State shows the delay in bringing Gilley to trial was caused by Gilley rather than being attributable to the State.

IT IS SO ORDERED.

DATED this 9th day of November, 2005.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge